

## COUNCIL PROCEEDINGS

Tuesday, February 1, 2011

1. **CALL TO ORDER AND ROLL CALL**

Mayor Osborne called the regular February 1, 2011 council meeting to order at 6:05 p.m. in the council chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Appelbaum, Becker, Cowles, Gray, Karakehian and Morzel.

Mayor Osborne reminded residents of the upcoming deadline for Boards and Commissions recruitment.

2. **PUBLIC PARTICIPATION and COUNCIL/STAFF RESPONSE – 6:06 p.m.**

1. Seth Brigham sang a song in honor of the “fascist” decorum rules.
2. Jim Topping urged Council to move forward with the Mapleton Early Childhood education project proposed by BVSD. Approximately 200-300 four year olds would benefit from the program. Casey Middle School was a great example of what can be accomplished with the City and BVSD’s cooperation.
3. Judy Reid, co-chair of the Mapleton School Centennial Committee, spoke in support of re-opening the Mapleton School. Parking should take up as little of the playground area as possible.
4. Stephen Keenan also spoke in support of the Mapleton School project. He asked what kind of assurances the City could get from BVSD that Boulder’s schools would be protected. Regarding the Xcel franchise, he thought the city should set a carbon tax and carbon price.
5. Shawn Edwards speaking on behalf of Tom Gillespie with Island LLC asked if Council could allow submission of his medical marijuana license outside of the November 1 deadline.

**City Manager Response:**

Deputy City Manager Fetherston clarified that minutes would be available from the HHS Community meeting referred to by Ms. Reid.

**City Attorney Response:**

None.

**City Council Response:**

None.

3. **CONSENT AGENDA: - 6:21 p.m.**

An alternate ordinance was provided for item 3D.

A. **CONSIDERATION OF A MOTION TO APPROVE THE DECEMBER 21, 2010 CITY COUNCIL MEETING MINUTES.**

Council Member Becker recused from this item as she was not present on December 21, 2010.

- B. **CONSIDERATION OF A MOTION TO APPROVE THE JANUARY 4, 2011 CITY COUNCIL MEETING MINUTES.**
- C. **CONSIDERATION OF A MOTION APPROVING AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT FOR COLLECTION OF COUNTY USE TAX BETWEEN BOULDER COUNTY AND THE CITY OF BOULDER.**
- D. **THIRD READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7778 AMENDING SECTION 5-7-4, "POSSESSION AND SALE BY MINORS UNLAWFUL," B.R.C. 1981, RELATING TO PRIVACY OF RECORDS, AND SECTION 7-4-74, "AUTOMATED ENFORCEMENT SYSTEMS," B.R.C. 1981, RELATING TO PROTECTION FROM DISCLOSURE IMAGES OBTAINED THROUGH AUTOMATED LICENSE PLATE RECOGNITION TECHNOLOGY, AND SETTING FORTH RELATED DETAILS.**
- E. **THIRD READING AND CONSIDERATION OF ORDINANCE NO. 7780, AMENDING CHAPTER 6-14, "MEDICAL MARIJUANA," B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.**
- F. **SECOND READING AND CONSIDERATION OF EMERGENCY ORDINANCE NO. 7782 ADOPTING SUPPLEMENT NO. 107 WHICH CODIFIES PREVIOUSLY ADOPTED ORDINANCE NOS. 7731, 7732, 7753, 7756, 7760, 7761, 7767, 7768, 7769, 7770, 7771 AND 7752 AND INCLUDES OTHER MISCELLANEOUS CORRECTIONS AND AMENDMENTS TO THE BOULDER REVISED CODE, 1981.**

Council Member Gray moved, seconded by Wilson to approve Consent Agenda items 3A through 3F with the substituted buff colored handout for item 3D. The motion carried unanimously 9:0 with Council Member Becker recused from item 3A.

- 4. **CALL- UP CHECK IN:** - None.

## **ORDER OF BUSINESS**

- 5. **PUBLIC HEARINGS:**

None.

- 6. **MATTERS FROM THE CITY MANAGER:**

- A. **INTRODUCTION OF THE COLORADO CHAUTAUQUA ASSOCIATION'S STRATEGIC PLAN. – 6:23 P.M.**

Deputy City Manager Fetherston indicated this was the first of several meetings scheduled to discuss the Chautauqua Strategic Plan. This night's focus was to allow Chautauqua Executive Director Susan Connelly present the Chautauqua Strategic Plan and allow Council Members to ask questions. A yellow handout was provided which included the Chautauqua lease with the

City of Boulder. Mr. Fetherston also announced several upcoming meetings including a study session at Chautauqua on February 8 at which Council members would have more time to ask questions of Chautauqua representatives regarding the Strategic Plan, and again on April 12 at which city staff will provide additional information and pose key questions for Council consideration.

Josh Taxman, current president of the Chautauqua Board, provided an introduction to Chautauqua's Strategic Plan indicating that the plan was meant to be a 2020 Vision Plan to ensure a sustainable future for the institution.

Susan Connelly, Executive Director of the Colorado Chautauqua Association, noted that the biggest change since the last lease renewal in 1998 had been the year round use of the meeting facilities and cottages. In addition, Chautauqua received a National Historic Landmark status in 2004. The Association invests nearly \$1 million annually to maintain the park area and buildings. Tourism substantially subsidizes the programming.

Mr. Taxman noted the Board started working on the vision plan over ten years ago. The cultural landscape assessment was completed and presented in 2004. A nine-month retreat feasibility analysis and Urban Land Use technical assistance panel were completed in 2005. Work continues on merging historic preservation and environmental sustainability. Landscape design guidelines and a comprehensive lighting plan were currently in process.

Susan Connelly spoke to one of the central elements of the strategic plan which included a new multi-use building on the site of the current picnic shelter area and its proposed uses. A key point was that it could help produce additional revenues by increasing meeting space and supporting additional programs during the winter months.

Tom Lyon with Wolf Lyon Architects explained that the picnic shelter site was in a prime spot for a multi-use building that could further support the auditorium, dining hall and academic hall. The site also slopes so that some of the uses could be fit into the hillside and reduce the overall scale of the building.

Mr. Taxman concluded by suggesting the vision plan would be an important investment in one of Boulder's most valuable venues.

Council Member Becker indicated she would be absent for the February 8 meeting and voiced appreciation for Chautauqua's focus on addressing all three aspects of sustainability. She clarified with Ms. Connelly that the additional revenue stream from winter programs would help support the investment.

Council Member Gray was interested in learning how the architect would mitigate the back of the building facing the McClintock trail. She was also interested in knowing what kind of additional grants and revenues could be leveraged.

Mayor Osborne indicated she was more interested in the lease and wanted to better understand the City's balance of authority.

Council Member Appelbaum asked how big the building would be and how many people could be accommodated. He also wanted to know more about proposed parking solutions and year-round public bathroom use.

Council Member Ageton would like to know more about the size and flexibility of the new meeting space so she could better understand the types and sizes of groups Chautauqua would be marketing to.

Council Member Gray asked staff to make sure the Boards and Commissions (Parks and Recreation Board and the Landmarks Board) were made aware of the upcoming meetings with Chautauqua.

Council Member Morzel asked where the additional revenues were coming from (i.e. performances) and what the additional revenues from a new building would be used for.

Mayor Osborne reminded Council Members that the February 8 meeting would be up at Chautauqua and provide the opportunity to have a more in depth discussion with Chautauqua staff about the strategic plan.

7. **MATTERS FROM THE CITY ATTORNEY: - 7:03 p.m.**

None.

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

A. **UPDATE ON BOULDER VALLEY SCHOOL DISTRICT PROPOSAL TO UTILIZE EDUCATION EXCISE TAX (EET) FUNDS FOR EARLY CHILDHOOD EDUCATION. – 7:04 P.M.**

Council Member Gray, a member of the School Issues Committee, introduced the item and noted there was \$4.25 million in EET funding available. A request was received from BVSD to utilize \$3.5 million to support the Mapleton Early Childhood center. The goal was to see what information Council Members would like to have brought back to consider a more formal request in April.

Policy Advisor Carl Castillo provided some background that the Boulder Valley School District, rather than expanding programs at several different schools, was interested in combining services at the Mapleton School. BVSD would remain the owner of the building and provide the education services. Some issues remain to be vetted about the actual programming.

Housing and Human Services Director Karen Rahn reminded Council that previously there was a community effort to repurpose the Mapleton School building. At that time, a rehabilitation analysis was done. A key issue was the operating costs for the tenants in the building (not the capital costs). At that time, the BVSD was unwilling to assist with ongoing operational costs. The recent passage of the mil levy would allow the BVSD to support the operating costs and management of the building. The project would be BVSD's own programs and would fulfill a need that is of interest in the community. Displacement of the Head Start program at other schools would be a concern among other things.

Mr. Castillo indicated BVSD would be looking for a response from Council by April to indicate interest in supporting the project. If Council was not interested in the project BVSD would move forward with expansion in other schools. He reminded Council that the EET dollars were originally passed to be utilized for educational services. If Council

wanted this matter considered, he asked what kind of information Council would like to help inform its decision. He also suggested Council consider documenting the process in terms of an Intergovernmental Agreement.

Council Member Appelbaum suggested the key question was whether this project would better serve the population it was intended to serve. Would centralization really better serve the community? Another concern was what would happen to the building in the long term.

Council Member Karakehian commented that one of the questions the committee asked related to the potential service area and it was suggested that it would serve a lot of the North Boulder area but it would be important for them to come back and provide that detailed information to Council. He also suggested some value engineering occur such as an elevator installation. Such investment now would help sustain the building in the future. He also commented that many neighbors were concerned that parking NOT be allowed on site. Some amortization of the city's funds should occur so the city is refunded its investment should BVSD decide not to continue operating at Mapleton.

Council Member Morzel agreed with the previous Council Members' comments. She would like a better understanding of the consequences and impacts to children going to a centralized location rather than a neighborhood school. Focus should be on the best outcome for the children. She was very concerned with the possible displacement of the Head Start Program; where would Head Start fit into the programming. She was also concerned about the \$700,000 in commitment from the County for the Heads Start program. She agreed it was important to have an IGA.

Council Member Ageton concurred that it was most critical to determine the best use for the dollars and guarantee a significant community benefit. Understanding the target population would be important. She would like to see a more comprehensive model. She was also concerned about the Head Start program at Creekside and would like to know what the BVSD was thinking about serving that population. As far as a question for staff, she asked what other types of educational projects the City would be interested in asking Council to fund. She would also like to see the total projected cost of remodeling and how they arrived at the amount they were asking of the City.

Mayor Osborne commented it was clear that BVSD was very interested in looking at early childhood education to help close the achievement gap. She felt this was an appropriate use of the EET funds and also supported the amortization of funds.

Deputy Mayor Wilson was supportive of preserving the Mapleton building and wanted to continue discussions with BVSD. He was interested in how BVSD would ensure meeting community needs. He also wanted an expanded discussion about the bulk of the EET funds (i.e. Broadway/Euclid bus stop and underpass) which also benefited school children.

Council Member Gray supported the item coming back to Council in April. She agreed with keeping Mapleton as a public resource. More information about how BVSD weighed re-using Mapleton versus having to add on at other schools was requested. She did not support filling the playground with parking and was interested in how removing that option would impact the proposed costs. She agreed that BVSD should analyze



adding an elevator in the building and supported having an IGA. She had arranged a meeting with one group that has ideas about a mini Mapleton.

Council Member Cowles agreed with his colleagues comments and recognized that preserving Mapleton as a school was a high value in the community as well as supporting economically stressed families. He agreed one concern was whether this was the best use of EET funds. He hoped this wouldn't undercut other important programs including Head Start.

Council Member Becker agreed with Council Member Appelbaum that the core of the issue was whether this project would better serve the community it was intended for and the ballot measure was intended to help bridge the achievement gap. She would like to understand the service area more and how it would impact other local programs. She also wanted to understand more about enrollment trends.

Council Member Ageton was very interested in hearing from the County about how the project would impact Head Start and specifically the program at Creekside.

Council Member Morzel commented that BVSD did have buses for smaller children.

Council Member Cowles requested a map that would show where schools are and what programs they had.

**B. CONSIDERATION OF A MOTION TO APPROVE AMENDMENTS TO COUNCIL RULES OF PROCEDURE, INCORPORATING RULES OF DECORUM. – 7:49 P.M.**

City Attorney Tom Carr introduced the item and spoke to several changes that were requested at the council retreat. He also introduced some additional requested changes provided in a blue handout at the meeting. A proposed amendment to ban intoxicated individuals was included in the blue handout.

Council Member Morzel suggested that the rules of procedure had been vetted with the ACLU and may just need some minor tweaks. She asked Council Member Appelbaum to speak to his concerns about time limits for public hearings.

Council Member Appelbaum suggested he was not in favor of limiting public hearing speaking time to less than three minutes but did want to be more firm with cutting speakers off at their three minute limit.

Council Member Morzel generally agreed with Council Member Appelbaum and noted some members of the public have prepared statements and may not be aware until the last minute that time is limited. She felt Council should seek to make residents feel welcome at public hearings.

Mayor Osborne asked whether Council Member Appelbaum would still support limiting speakers to 2 minutes if more than 30 people signed up. Council Member Appelbaum responded that it was an option but he still wasn't supportive of limiting time.

Mayor Osborne spoke to the need to get through business at a decent hour when the public was still watching. She would support whichever option Council decided.

Deputy Mayor Wilson appreciated the Mayor utilizing discretion in limiting speakers' time. Some residents tend to feel it necessary to fill the three minutes. He felt council should make decisions earlier when members are fresh. He supported giving the Mayor discretion.

There was general agreement that if time was limited to two minutes, pooling should be allowed for four minutes.

Deputy Mayor Wilson called out a couple of issues in the Council Agenda Committee minutes from this week. He suggested Council Members should be allowed to call a Point of Order "Section V, Rules of Speaking, by changing the third sentence to read "a Council Member shall not speak while another has the floor except to make a point of order." He also suggested adding electronic delivery which was addressed in proposed amendment No. 6 in the blue handout. In Section XVI (b) (5) he suggested removing the word "center" and replacing it with the word "aisles". He also highly encouraged his Council colleagues to re-read the rules of speaking. In addition, under section 8, voting, it specified to either say Aye or No and yes isn't included.

Council Member Karakehian supported the two minute limit for speakers on public hearings and felt speakers were able to say enough during that time. Pooling time was a good tool for those who needed more time. Speeding meetings up was just as important for residents as for Council.

Council Member Ageton thought more people could be accommodated with the two minute limit and she supported Mayoral discretion as well as the 4-minute pooling option.

Council Member Gray also supported the two minute limit with Mayoral discretion. She spoke in support of adding language in section II. (3) to add information about a public comment period for call-ups as referenced in a previous hotline email. She also suggested section III. (E) (9) be added to state that no meetings be scheduled on nights other than Tuesdays without polling the entire Council's availability.

Council generally agreed that the section on removal of intoxicated individuals should be added.

Deputy Mayor Wilson moved, seconded by Karakehian to adopt the amendments to the Council Rules of Procedure in the blue handout as follows:

**Proposed Amendment 1:**

Amend section II.3 on page 5 as follows:

3. Open Comment. At the beginning of every formal council meeting, 45 minutes are set aside for open comment. During the time, members of the public are invited to express their views on any issue, except those set for public hearing later in the meeting.

Members of the public who wish to comment on call up items listed under Agenda Item 8 will be added to Open Comment if they have signed up before 5:45 pm.

**Proposed Amendment 2:**

Amend section II.4 on page 5 as follows:

4. Public Hearings. Public hearings are held to seek input on a particular ordinance or policy decision. These hearings provide an organized forum to address a particular subject. Statements made during a public hearing become part of the record for council's decision on the issue. Quasi-judicial hearings have different procedures addressed in Chapter 1-3. These Council Procedures do not address procedures for quasi-judicial matters.

**Proposed Amendment 3:**

Add a new section III.E.9 on page 8 as follows:

9. Tuesday Meetings. CAC shall not schedule council meetings on dates other than Tuesdays without polling the entire council for their availability.

**Proposed Amendment 4:**

Strike section IV.2.d on page 9.

~~Board or commission members, whose board or commission acted on a matter, will be allowed to speak during staff presentation or at the beginning of any open comment or public hearing, regardless of whether the member voted for or against the matter.~~

Add a new sentence to section IV.5 on page 10 as follows:

5. Public Hearings. Expected substantial public comment items are generally placed first on the agenda, in the order of public interest in the item, as anticipated by the Council Agenda Committee, but critical short items may be placed first when deemed appropriate by the agenda committee. Items from the city manager, city attorney, or mayor and members of council which are of substantial public interest are placed in this section of the agenda, in the order of public interest. Speaking rules are the same as for Open Comment. An applicant may request additional time as reasonably required to present their case. In response, the mayor may designate a longer time period for applicants, generally not to exceed fifteen minutes and to occur immediately upon the opening of the public hearing, in order to give the public an opportunity to respond. Additional support for applicant's positions should come from individual witnesses. Board or commission members, whose board or commission acted on a matter and who have been designated to speak by the board or commission, will be allowed to speak during staff presentation or at the beginning of the public hearing. A board or commission may designate a person who voted with the majority or a person who voted with the minority or one speaker from each side.

**Proposed Amendment 5:**

Amend section IV.12 on page 11 as follows:

12. Adjournment. The council's goal is that all meetings be adjourned by 10:30 p.m. An agenda check will be conducted at or about 10:00 p.m., and no later than at the end of the first item finished after 10:00 p.m. Generally, absent a deadline which the council cannot affect, no new substantial item will be addressed after 10:30 p.m. No new item shall be introduced after 10:30 p.m. unless a majority of the council members in attendance at that time agree. All council meetings shall be adjourned at or before 11:00 p.m. ~~Items not~~



completed prior to adjournment will generally be taken up at a special meeting at 6:00 p.m. on the following Tuesday evening.

**Proposed Amendment 6:**

Amend section VII.B on page 13 as follows:

B. Notice. All documents delivered to council members' residences or electronically, prior to any meeting shall be deemed to have been received and read, unless a council member indicates to the contrary during consideration of the matter. In the event that a council member has not received and read the document in question, the mayor shall determine an appropriate course of action, which may consist of an explanation of the substance of the document by a person familiar with its contents, or a recess. Abstentions are not permitted by the city charter under these circumstances.

**Proposed Amendment 7:**

Amend section XVI.C.6 on page 21 as follows:

6. In addition, by vote of the council, any person removed from a meeting may be excluded from attendance at council meetings for thirty (30) days after such removal. A longer period of prohibition from attendance at council meetings may be determined by council by a vote, if the person has been removed from the Council Chambers or meeting room in the past twenty-four months for violation of these Rules of Decorum, or the council determines that the attendee's conduct was so severe as to necessitate a longer period of prohibition.

**Proposed Amendment 8:**

Add a new section XVI.B.7 on page 20 as follows:

7. No person at any council meeting shall be in a state of intoxication caused by the person's use of alcohol.

Also add a new section XVI.C.10 on page 21 as follows:

10. Any staff member may request that a police officer assess any person at a council meeting for intoxication. A police officer may also make such an assessment based on personal observation. If in the officer's professional opinion, the officer has a reasonable suspicion that a person in attendance at a council meeting is intoxicated through the use of alcohol, the officer may exclude that person from further attendance at that meeting. A person excluded shall be readmitted if the person excluded submits to an alcohol breath test and produces a result below .05 blood alcohol level.

The motion included the following additional amendments:

Section IV.2.a on page 8 to 9:

Three or more people can pool their time so one speaker can speak for 5 minutes if all of the people pooling time have signed up to speak when the spokesperson is called to speak and

are in the Council Chambers when the speakers are called. The 5 minutes of pooled time can be reduced to 34 minutes by the presiding officer if the time for individuals has been reduced to 2 minutes.

XVI.B.5 on page 20.

Change “center aisle” to aisles

V.B on page 11.

To assign the floor, the mayor recognizes by calling out the ~~person's~~ council member's name. Only one council member ~~person~~ may have the floor at a time. A council member ~~person~~ shall not speak while another has the floor, except to make a point of order. The mayor generally next recognizes the ~~person~~ council member who firsts asks for the floor after it has been relinquished.

### **OTHER MATTERS:**

#### **RTD US 36 Sale Tax Proposal: - 8:29 p.m.**

Mayor Osborne indicated she had a meeting tomorrow with the Metro Mayor's Caucus to talk about the potential for a sales tax increase from RTD for the US 36 project. No information was provided about polling in terms of what the public would likely support. She was interested in hearing how Council Members were feeling about the project.

Council Member Becker asked whether the 2% tax increase would really get everything done and clarified that the tax would sunset upon completion. Mayor Osborne commented that with a 2% tax everything would be done by 2027.

Council Member Appelbaum noted he was okay with a tax increase but had the biggest concern that the tax was no guarantee of the completion of US 36 or FasTracks and the Northwest Rail would be completed last. He thought one of the agreements should be that at least one of the corridors in Boulder's sector must be completed.

Mayor Osborne responded that she would be happy to mention Council Member Appelbaum's concerns but was concerned about changing any agreements at this point in the process.

Council Member Ageton noted that Council Member Appelbaum's logic was solid but other communities were in the same position as Boulder and she cautioned against changing any agreements at this point.

Deputy Mayor Wilson also agreed with Council Member Appelbaum's frustration but gave the Mayor his support in using her discretion at the meeting.

Council Member Gray also offered her support to Mayor Osborne while agreeing with Council Member Wilson and Ageton's comments.

Council Member Morzel supported Mayor Osborne but also expressed dissatisfaction that BRT would not be coming to Boulder and asked Mayor Osborne to raise this at the

meeting. It would be hard to get Boulder's residents to vote for FasTracks without any assurances that BRT would be coming now to Boulder.

Mayor Osborne noted Council Members had a valuable point and would raise it with her Metro Mayor's Caucus colleagues.

Council Member Morzel commented that every time someone had to make a transfer, they were more likely to remain in their vehicles.

Council Member Karakehian commented that he had not been a big RTD supporter as it seemed the City had paid more than it ever got back. He shared Council Member Appelbaum's concerns but appreciated that Boulder was a part of the bigger picture.

Mayor Osborne would report back to Council after the meeting.

9. **PUBLIC COMMENT ON MATTERS: - 8:49 p.m.**

None.


10. **FINAL DECISIONS ON MATTERS: - 8:49 p.m.**

Vote was taken on the motion to adopt the amendments to the Council Rules of Procedure as listed in the minutes under agenda item 8B above. The motion carried unanimously 8:0; Cowles absent.

11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 8:50 P.M.

APPROVED BY:

  
Susan Osborne,  
Mayor

ATTEST:

  
Alisa D. Lewis,  
City Clerk